Chicago, where his career is common property. He will conduct the courses on Property in the third year and, with Professor Joseph Warren, in the second year, as well as a course not previously given on Contracts and Combinations in Restraint of Trade. Assistant Professor Zechariah Chafee, Jr., is a graduate of the School of the class of 1913 and a past editor of this REVIEW. Since graduation he has been engaged in the practice of the law in Providence, Rhode Island. He will have charge of the third-year course on Equity, of the course on Bills and Notes, and, with Professor Wambaugh, of the course on Insurance. Mr. Arthur D. Hill has been made a full Professor. Professor Hill will conduct, in addition to the course on Evidence, the courses on Criminal Law and on Penal Legislation and Administration. The Ezra Ripley Thayer teaching fellowship is held by Chester Alden McLain, LL.B. 1915.

A chief treat for Law School men this year will be the series of lectures on Professional Ethics by Mr. Justice Francis Joseph Swayze of New Jersey. It is particularly fitting that this subject, to the development of which the late Dean Thayer contributed so largely, should now be systematically treated in the School. Other courses offered for the first time deal with Modern Developments in Procedural Law, with Professor Scott in charge, and with the Jurisdiction and Procedure of Federal Courts, under Professor Frankfurter. There are also certain reassignments of old courses. Dean Pound and Professor Westengard will have the course on Torts. Professor Beale conducts the course on Damages, and gives up Municipal Corporations, which is taken by Professor Frankfurter. Professor Westengard has the course on Admiralty, which Mr. Dutch gives up. Professor Frankfurter has the course on Partnership, and Professor Joseph Warren the course on Quasi-Contracts. A course of lectures on Patent Law is given by Mr. Odin Roberts, LL.B. 1891, of the Boston bar. New York Practice is given by Mr. Allen Reuben Campbell, LL.B. 1902, of the bar of New York City, and a course on Brief Making by Mr. William Goodrich Thompson, LL.B. 1891, of the Boston bar. The Law of Mining and Water Rights and Massachusetts Practice are omitted for this year.

THE ADAMSON LAW. — Any discussion of the so-called Adamson Eight Hour Railroad Labor Law [1] must begin with an investigation of what the

[1] 64th Congress, H. R. 17700, approved Sept. 3, Sept. 5, 1916. "An act to establish an eight hour day for employes of carriers engaged in interstate commerce, and for other purposes."

Sec. 1. "Beginning January 1, 1917, eight hours shall, in contracts for labor and service, be deemed a day's work and the measure or standard of a day's work for the purpose of reckoning compensation for services of all employes . . . actually engaged in the operation of trains" in interstate and foreign commerce, excepting those employed on railroads less than one hundred miles in length, electric street and interurban railroads.

Sec. 2. A commission of three appointed by the President is to study the effects of the standard workday during a period of from six to nine months and report thereon within thirty days thereafter.

Sec. 3. "Pending the report of the Commission herein provided for and for a period of thirty days thereafter the compensation of railway employes subject to this Act

law means and what it does to the existing facts. Only after such investigation can one discuss with understanding its constitutionality or the other legal problems that it raises.

The law, in spite of its title, is not an eight-hour law. By this is meant that it does not restrict the hours of labor to eight hours a day.[2] Eight hours is indeed to "be deemed a day's work," but there is no provision that men shall not work longer if they and their employers wish, no penalty for overtime, and no higher rate of compensation for time beyond eight hours. When the law comes in question it will have to be sustained, if sustained it is to be, on some other ground than that it is a regulation of the hours of labor.[3]

What the law does do is to regulate the rate of pay. Men are to get for eight hours what they previously got for ten, and for time above eight hours not less than *pro rata*. Even here the meaning of the law and its application to the facts are very difficult.[4] Some of the difficulties seem almost to go beyond the possibility of interpretation by a court, and to require amendment or some legislative declaration of intention. When all is said, however, the act was meant for an experimental[5] wage-

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for a standard eight hour workday shall not be reduced below the present standard day's wage," and for overtime not less than *pro rata*.

Sec. 4. Provides penalties for violation.

[2] This is not meant as a criticism of the act. In the present circumstances, a restriction of railroad hours of labor to eight hours would be impossible. Trains must reach their destination, and cannot be left standing on the prairie. It may some day be possible, by redistribution of division points and so forth, to allow all trainmen to go home when they have worked eight hours. But as things are, to decree an eight-hour workday without a liberal dispensing power somewhere, would disrupt the transportation system of the country.

[3] It has been argued that the act, by increasing the ratio of the labor cost to other costs, will induce efforts for economy in labor cost and so result in shorter hours in practice. But the pressure to reduce the labor cost has already been enormous, and in the cases where the new pressure chiefly is applied, the long slow freight runs, as much depends on the operative agents as on the train dispatchers. See however as to this and generally as to the economics and probable operation of the act, William Z. Ripley, "The Railroad Eight-Hour Law," in AM. REVIEW OF REVIEWS, October, 1916.

[4] The act operates by interpreting terms used in labor contracts. (See sec. 1, set out n. 1 above.) Many of the present contracts provide a dual or elective basis for the figuring of wages. Ten hours earn a day's wage, so do one hundred miles. The operative's pay is figured on the basis most advantageous to him. So if an engineer runs, say, 150 miles in, say, 5 hours, he gets three halves of a day's pay for five hours' work. Does the act forbid such contracts? Other men, conductors largely, are paid on a monthly basis. Are such contracts made illegal? In many other cases the same road, on standard runs, will be paying, say, $3.50 for run A of eight hours, $4.00 for run B of nine hours, $4.50 for run C of ten hours. Does the Act mean that run A men get $3.50, run B men $4.00 plus one eighth of $4.00, run C men $4.50 plus two eighths of $4.50? An anxious reading of the language of the act with these facts in the background has so far not suggested an answer to these questions.

[5] It is barely possible to argue that the act is constitutional upon this ground alone. Congress can undoubtedly investigate any matter about which it may legislate. Since the relation between any proposed legislation and the commerce which is intrusted to the care of Congress is frequently largely a fact question, investigation becomes necessary in order to delimit Congress' power to legislate. It has therefore been well argued that the inquisitorial power of Congress extends beyond its legislative power, though it must necessarily be limited "to matters reasonably calculated to afford information useful and material in the framing of constitutional legislation." See Interstate Commerce Commission *v.* Harriman, 157 Fed. 432, 438. See however Harriman *v.* Interstate Commerce Commission, 211 U. S. 407, 417. If Congress determines that investi-

regulating measure, and if it can be applied as such it should be. The question is therefore the power of Congress to enact such legislation.

Such power, if it exists, of course comes from the Commerce Clause. Whether the relations of an interstate carrier to its employees are subject to federal regulation is a question dependent in each case upon the showing of a direct connection between commerce and the proposed regulation.[6] Thus there have been upheld a limitation upon the number of consecutive hours that an employee may work,[7] restrictions on the mode of paying seamen's wages,[8] and an Employers' Liability Act; [9] but a prohibition upon a railway's discharging an employee because of union membership has been declared too remote.[10] The situation at the passage of the present act seems almost to have proved that as a matter of fact the wage question is now directly and substantially related to the possibility of commerce between States.

But the regulation, besides affecting commerce, must be reasonable, must not deprive persons of property without due process. Here again no line *a priori* can be drawn. Cases must be met as they arise. In the supposed case before us, the same facts that show the direct bearing of regulation of the wage question upon commerce seem to give such regulation a reasonable reference to the welfare of the service.

But there is a way of approach that gets us much nearer to the problem. Congress unquestionably possesses, and now for some years has exercised through the Interstate Commerce Commission, the power to regulate the rate of charge for railroad service between States.[11] Clearly the exercise of this power determines the gross income of the railroads. In an ordinary business, wages are regarded as one of the expenses of production according to which firms in that field regulate their prices and hence their gross incomes. Ability to vary the selling price is a powerful factor in the hands of employers when dealing with employees over rates of wages. It is one of the factors that give employers yielding qualities. Obviously if the power to regulate prices is taken away the situation between employers and employees is changed fundamentally. Henceforth disputes over wages are a simple matter of give and take between them; no means of shifting the loss of one to some third party — the public — exists unless the body that has taken the price-regulating power is a party to the controversy. In brief the settlement of any question involving the distribution of a fund produced by labor and capital requires the presence of the person that says how much that fund shall be.[12] It is a necessary and logical consequence of the assumption by Congress of the regulation of rates that it should now interfere to supervise the division of earnings

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gation is fruitless and experiment is necessary, is it permissible for it to pass a temporary act, though its power to pass a permanent act of the same sort has not been definitely proved?

[6] See Employers' Liability Cases, 207 U. S. 463, 494.

[7] Baltimore & Ohio R. Co. *v.* Interstate Commerce Commission, 221 U. S. 612.

[8] Patterson *v.* Bark Eudora, 190 U. S. 169.

[9] Second Employers' Liability Cases, 223 U. S. 1.

[10] Adair *v.* United States, 208 U. S. 161; Harlan and Holmes, JJ., dissenting.

[11] See, for instance, Interstate Commerce Commission *v.* Chicago, R. I. & P. Ry. Co., 218 U. S. 88.

[12] See, as to a situation most analagous to this, Arthur Evans Wood, "The Labor Problem in Municipal Utilities," UTILITIES MAGAZINE, Sept. 1916, 17, 27 *seq.*

among the producing elements, and if interference in that division shows a readjustment of rates to be necessary, to grant such. Only an understanding and regulation of the fair demands of the elements working the railroads can enable Congress to determine what the railroads should receive for their commodity. The power now assumed by Congress is therefore a condition precedent to the fair exercise of the power to regulate rates. It is the rescue of the railroads from their impossible position between the upper and nether millstones — a dilemma long familiar to the public mind.

But Congress has intrusted one millstone to the Interstate Commerce Commission. If it retains the other one itself the grinding may go on. It cannot be questioned that if the combination prevents the roads from earning a fair income, power has been exceeded somewhere.[13] But is it the raising of the wage by Congress, or a supposed refusal to raise rates by the Commission, that is unconstitutional? Presumably the latter. Where safety appliances are prescribed by statute, the assumption apparently has been that they must be applied regardless of cost,[14] and the rates advanced if necessary. So probably of wages. The confiscation indeed does not happen until the last remedy has been exhausted, *i.e.*, until an advance has been refused. Of course, the reliance of the Commission on Congress for existence, and the probability that finally the wage question too will be left in the hands of the Commission, make highly improbable any such clash as that supposed.

THE CASE OF *THE ZAMORA*. — The decision of the Privy Council in the case of *The Zamora* [1] does not justify the excitement which it caused in contemporary newspapers. It does not hold that Order XXIX, Rule I, of the English Prize Court Rules, which is repugnant to the law of nations as recognised by England and administered in English courts, is invalid because of any dominant quality of the law of nations, but because the Order in question was made without authority.

The case arose from the desire of the English war authorities, at a time of moderate necessity, to use part of the cargo of a neutral ship held by the prize court, pending suit for condemnation as contraband. The King in Council, in contravention of international law,[2] amended the Prize Court Rules so as to require the prize court to allow such action, but the Privy Council refused to countenance the alteration.

The sole question was the authority of the King in Council to enact the law. This might arise from either of two sources, the Royal Prerogative, or Parliamentary delegation. The Prize Court Act, 1894, is the only Parliamentary grant at all applicable to the case. That simply permitted the Executive to regulate the procedure and practice of the court. There

[13] *Cf.* Smyth *v.* Ames, 169 U. S. 466.

[14] Baltimore & Ohio R. Co. *v.* Interstate Commerce Commission, 221 U. S. 612; New York, N. H. & H. R. Co. *v.* New York, 165 U. S. 628.

[1] 32 T. L. R. 436.

[2] "International law" is used throughout the text to mean the body of rules formulated by the nations of the world to govern their relations *inter se*, as those rules are recognized by an individual sovereign and administered by its courts.